Enactment, being persons aggrieved by the decision of the warden, they could appeal, and their inability to do so was due entirely to their negligence or default.

For these reasons these two applications are dismissed with costs.

Applications dismissed.

Solicitors: *Braddell Bros.; Skrine & Co.; Shearn, Delamore & Co.*

NGU EE NGUOK v. LEE AI CHOON

[A.C.J. (Lee Hun Hoe J.C.) September 21, 1964]

[Sibu — Civil Appeal No. CA/10 of 1964]

Gaming — Gambling contract — "Hwei" — Claim against head of hwei — Promissory Note — Onus of proof.

Where a person alleges that a head of a *hwei* is liable on the default of a member, the onus of proof lies on him, and in this case as the respondent had not discharged the onus of proof, her claim should have been dismissed.

[**Editorial Note:** See article on "Hway" in [1938] M.L.J. xi and reference may be made to *Ramasamy* v. *Muniappan* [1940] M.L.J. 290 and *Ameer Batcha* v. *Kunjumon* [1959] M.L.J. 59.]

Cases referred to:—

(1) *Ngu Ee Ngok (f)* v. *Chiang Siok Ing (f)* Sibu High Court Civil Appeal No. CA/1/64.

(2) *Kong Mee Choon* v. *Tang Hie Hiong (f)* Sibu High Court Civil Appeal No. 17/61.

(3) *Soo Hood Beng* v. *Khoo Chye Neo* (1896) 4 S.S.L.R. 115.

MAGISTRATE'S CIVIL APPEAL.

Parties in person.

Lee Hun Hoe J.C.: This is an appeal from the decision of the trial magistrate of the Court of the Small Causes in Sibu.

It is not disputed that appellant was the head of the "hwei" and respondent a member of the said "hwei". Respondent said on 10.5.64 she gave appellant $200 and in return appellant gave her a receipt. This receipt in actual fact is a sort of promissory note signed by the member who tendered the "hwei", in this case Wong Tien Hock, and also signed by Ling Hung Moi as a guarantor. Wong Tien Hock defaulted. Respondent sued appellant as head of the "hwei" and Ling Hung Moi as a guarantor. The trial magistrate gave judgment for respondent against appellant in the sum of $200 with costs of $14. He mentioned nothing about Ling Hung Moi. It must be assumed that he dismissed respondent's claim against Ling Hung Moi. Against this judgment appellant has now appealed.

As this is a claim of "hwei" money I do not believe respondent gave $200 to appellant. She said she gave appellant $200 no doubt because the promissory note indicated $200 had been borrowed by Wong Tien Hock. It is common knowledge that a member paid the amount less interest, that is the sum offered as interest by the member who successfully tendered the "hwei". Respondent must have paid less than $200 although she would eventually receive $200 if the "hwei" concluded successfully.

In her statement of claim respondent alleged that Wong Tien Hock is a fictitious person. She claimed that appellant as head of the "hwei" and Ling Hung Moi as a guarantor were liable to her. Appellant by her written defence contended that there was no cause of action against her and that the guarantor was the person liable to respondent. However respondent has not appealed against that part of the trial magistrate's decision.

Appellant relied on the case of *Ngu Ee Ngok (f)* v. *Chiang Siok Ing (f)*.[1] In that case appellant was the head of a "hwei" and respondent a member of the "hwei". One of the members defaulted and respondent sued appellant in the lower court and succeeded. Allowing the appeal McGilligan J. held that on the evidence appellant was not liable to respondent. He also stated that each case must depend on its own facts. In another "hwei" case of *Kong Mee Choon* v. *Tang Hie Hiong (f)*[2] Lascelles J. in the course of his judgment at page 2 said:

> "In a *hway* there is only one person who has anything to do with the running of it and that is the manager. He is the person responsible for collecting the subscriptions, receiving tenders and paying out to the successful tenderer. He is in the supreme position of trust and I understand that in many instances he is held responsible if any member defaults. The agreement is between each member and the manager or head and not between the members themselves. (Williams C.J. in *Lee Pee Eng* v. *Ho Sin Leow* [1958] S.C.R. 18)."

I agree with the view expressed by Lascelles J. The head or manager of a "hwei" is the central figure and is a person trusted by each and every member of such a "hwei". Sometime one member may not even know another member. Everything in a "hwei" is transacted through the head or manager. I think it can be said that there is no privity of contract between the members.

The view that if a member defaults the head may be held liable must depend on the evidence adduced before the court. The onus is on the person who alleged that the head was liable, in this case the respondent. In this case she gave evidence in four lines and produced the promissory note in Chinese which does not appear to have been translated. I do not know whether the trial magistrate understood it. No evidence was led as to the nature of the "hwei" and to show the court in what way the head or manager was liable. One would have thought respondent would

call a person or persons who are acquainted with the intricacies of a "hwei" if she herself was in no position to do so. Such evidence will no doubt be of great assistance to the court. It must be remembered not all magistrates are conversant with the nature of a "hwei" which is peculiarly Chinese and seems to exist wherever Chinese are found. Except for Sibu such cases are rare. Apart from the case of *Soo Hood Beng* v. *Khoo Chye Neo* [3] I have been unable to find any reported cases either in Singapore or Malaya in the *Malayan Law Journal* or elsewhere. A magistrate can only act on the evidence before him no matter where his sympathy lies. In my opinion the trial magistrate should have dismissed respondent's claim against appellant as she had not discharged the onus of proof on the balance of probabilities. I say nothing about his decision concerning the guarantor as there is no appeal against that part of his decision. The order of the lower court is set aside. I allow the appeal with costs to the appellant. Costs assessed at $30.

Appeal allowed.

MOHAMED MYDIN v. RAMIAH

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 24, 1964]

[Ipoh — Federal Court Civil Appeal No. 85 of 1963]

Sale of Goods — Unconditional contract for sale of specific goods — Sale of lorry — Registration book not delivered — Sale of Goods (Malay States) Ordinance, 1957, ss. 20 and 21.

The parties had agreed on the sale of a motor lorry and it appeared that a motor vehicle repairer had taken delivery of the lorry for repair on behalf of the plaintiff, who was the purchaser. The registration book of the lorry was however not handed to the plaintiff. The trial judge held that the lorry had not been delivered to the plaintiff and awarded damages against the defendant.

Held: the sale of a lorry can be complete and effective even though the registration book, which is not a document of title, is not made available to the buyer and the trial judge should have held in this case that the lorry was duly delivered to the plaintiff.

Case referred to:—

(1) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

FEDERAL COURT.

N. Sharma for the appellant.

F. C. Arulanandom for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: This is an appeal by the defendant from a decision of the High Court in Malaya in a case which concerned the sale of a lorry.

The lorry originally formed part of the assets of a business dealing in rice, rubber, textiles and sundry goods of which one V. Shaik Dawood was the sole proprietor. On the 7th January 1957 V. Shaik Dawood entered into a written agreement with the defendant whereby the defendant agreed upon certain terms set out therein to buy the business as a going concern together with all the stock-in-trade including the lorry. On the 15th February 1957 V. Shaik Dawood executed a deed assigning and transferring all his right title and interest in the business to the defendant absolutely.

The defendant in turn entered into an agreement with the plaintiff for the sale by the defendant to the plaintiff of the same business including the lorry. On the 25th February 1957 both the defendant and the plaintiff executed a deed whereby the defendant assigned and transferred all his right title and interest in the business to the plaintiff absolutely. One of the recitals in this deed was to the effect that by the indenture dated 15th February 1957 and made between V. Shaik Dawood and the defendant, the defendant became the owner of the business together with all the stock-in-trade including the lorry.

A dispute arose between the plaintiff and the defendant some time after the execution of the deed. The plaintiff alleged that the defendant had failed to deliver the lorry to him. He accordingly sued the defendant for the sum of $5,000 which was the amount at which he valued the lorry. The learned trial judge held that the lorry had not been delivered to the plaintiff. He also expressed the view that the defendant had failed to put the lorry into a deliverable state and that therefore the property in the lorry had not passed to the plaintiff. He therefore gave judgment for the plaintiff for the sum of $3,500 being the amount at which he assessed the value of the lorry. It is against this judgment that this appeal is brought.

It is clear from the evidence that in February 1957 the witness Ng Boon Yong, who was a motor vehicle repairer, took the lorry from the police station at Ayer Tawar, where it had been kept, to his workshop. According to the police officer who was called to give evidence regarding the lorry, it was removed from the Police Station on the 28th February 1957. Ng Boon Yong stated that he took the lorry to his workshop on the plaintiff's instructions. It is to be observed that he was called to give evidence on behalf of the plaintiff. The learned trial judge stated that in his opinion there could not be any doubt that as between the parties some arrangement had been made to have the lorry removed from the police station at Ayer Tawar to the workshop. However, because the registration book relating to the lorry had not been handed to the plaintiff,